

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division**

OLIVIA LETELIER,)	
)	
Plaintiff,)	
)	Second Amended Complaint
v.)	
)	
SCOTT HISEY,)	
)	
And)	
)	
WAYNE WILBERGER,)	
)	
Defendants.)	Case No.: 5:18-cv-101
)	
)	
)	Plaintiff Demands Trial by Jury

SECOND AMENDED COMPLAINT

COMES NOW Plaintiff Olivia Letelier, by counsel, and for her Second Amended Complaint pursuant to Fed R. Civ. P. 15(a)(2), and with the written consent of opposing counsel, against Defendant Scott Hisey and Defendant Wayne Wilberger for damages in the sum of ONE MILLION DOLLARS (\$1,000,000.00), of which SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000.00) represents compensatory damages and THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00) represents punitive damages, together with the costs, interests and expenses of this action, and Plaintiff's reasonable attorneys' fees, alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff Olivia Letelier brings this action pursuant to 42 U.S.C. § 1983 and alleges a violation of the Fourth Amendment to the United States Constitution. This Court has

jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States, and, pursuant to 28 U.S.C. § 1343(a)(3) because it seeks to redress the deprivation, under color of State law, of rights, privileges and immunities secured to Plaintiff by the Constitution and laws of the United States.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because all or a substantial part of the events, acts and/or omissions giving rise to Plaintiff's claim occurred in this judicial district.

PARTIES

3. Plaintiff Olivia Letelier (hereinafter "Plaintiff" or "Mrs. Letelier") is a citizen and resident of Virginia.

4. Defendant Scott Hisey (hereinafter "Defendant Hisey") is a citizen and resident of Virginia.

5. Defendant Wayne Wilberger (hereinafter "Defendant Wilberger") is a citizen and resident of Virginia.

COUNT I: UNREASONABLE SEIZURE OF PLAINTIFF'S PERSON IN VIOLATION OF THE FOURTH AMENDMENT UNDER 42 U.S.C. § 1983

6. Paragraphs 1-5, as set forth above, are re-alleged and incorporated herein by reference.

7. Count I is brought against each Defendant in his individual capacity while serving as a member of the Sheriff's Office for the County of Rockingham, Virginia.

8. At all times herein, each Defendant was employed as a member of the Sheriff's Office for the County of Rockingham and was acting under the color of state law due to the fact that he was wearing his Sheriff's Office uniform and displaying his badge of authority.

9. On March 16, 2018, Plaintiff was present at a Juvenile and Domestic Relations Court hearing in at the courthouse located at 53 Court Square in the City of Harrisonburg, Virginia.

10. Upon leaving the hearing, Plaintiff was provided verbal commands from each Defendant.

11. Apparently unhappy with Plaintiff's response to each Defendant's commands, each Defendant placed his hands on Plaintiff and began to drag her to an underground tunnel in the courthouse.

12. Each Defendant grabbed one of Plaintiff's arms, lifted Plaintiff slightly off of the ground so that she could not walk, and proceeded to drag her to a booking area of the Rockingham Sheriff's Office.

13. Plaintiff submitted to each Defendant's show of official state authority when Plaintiff was forced to go into the underground tunnel towards the Sheriff's Office.

14. Upon seeing each Defendant, Plaintiff immediately believed him to be a law enforcement officer due to the fact that each was dressed in some sort of official law enforcement uniform and/or dress.

15. Each Defendant used so much force when taking Plaintiff into custody that Plaintiff has long term and/or permanent nerve damage to her neck, spine and/or back area.

16. Each Defendant seized Plaintiff's person for purposes of Fourth Amendment analysis when he curtailed Plaintiff's freedom of movement by detaining Plaintiff.

17. Plaintiff submitted to each Defendant's show of official police authority when each Defendant placed his hands on Plaintiff's person.

18. Each Defendant thus seized Plaintiff's person for purposes of Fourth Amendment analysis when he placed his hands on Plaintiff's person.

19. Each Defendant, while in some sort of official police uniform and/or dress, unlawfully assaulted and battered Plaintiff.

20. Each Defendant is subject to liability on account of the language in the following Federal statute, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983.

21. The Fourth Amendment to the United States Constitution provides in relevant part that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV.

22. The Fourth Amendment was made applicable to the States by the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643 (1961).

23. The rights of citizens under the Fourth Amendment are clearly established.

24. Plaintiff was "seized" for purposes of Fourth Amendment analysis when her freedom of movement was curtailed by each Defendant's show of official police authority.

25. Because each Defendant used force that more than what was reasonably necessary under the circumstances, each Defendant's seizure of Plaintiff's person was not reasonable, and thus a violation of Plaintiff's Fourth Amendment rights under the Constitution of the United States.

26. Each Defendant is subject to civil liability pursuant to 42 U.S.C. § 1983 because each Defendant violated Plaintiff's Fourth Amendment rights.

27. Plaintiff sustained the following damages as the proximate result of Defendant's unlawful conduct: physical pain, inconvenience, and medical bills (both present and future).

28. Neither Defendant, as a government official, is protected by the doctrine of qualified immunity from liability for civil damages because the conduct of each Defendant violated clearly established statutory or constitutional rights of which a reasonable officer would have known.

29. Punitive damages are demanded because each Defendant was recklessly and/or callously indifferent to the federally protected rights of Plaintiff – namely Plaintiff's Fourth Amendment right to be free from unreasonable seizures of her person and her right to be free from excessive and/or unnecessary force.

PRAYER FOR RELIEF

WHEREFORE Plaintiff Olivia Letelier, by counsel, demands for:

- A. Judgment against Defendant Scott Hisey and Defendant Wayne Wilberger for damages in the sum of ONE MILLION DOLLARS (\$1,000,000.00), of which SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000.00) represents compensatory damages and THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00) represents punitive damages;
- B. An order awarding Plaintiff's costs, expenses, and Plaintiff's reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and
- C. Trial by jury.

OLIVIA LETELIER

By: _____/s/_____
Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of June, 2019, I will file this document with through the CM/ECF system which will send a copy of the same to the following attorney of record:

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